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Supreme Court of the United States

OCTOBER TERM, 1943

No. 798

J. S. GARLINGTON and JENNIE LOU GARLINGTON,
Petitioners,

vs.

A. L. WASSON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING.

ELMER MCCLAIN,
Lima Ohio,
Counsel for the Petitioners.

D. M. OLDHAM,
Abilene, Texas,
THOMAS E. HAYDEN,
Abilene, Texas,
Of Counsel.

UNITED STATES LAW PRINTING CO., PHONE LAKEVIEW 6581, CHICAGO, ILL.

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners respectfully present their petition for rehearing.

As stated in the motion requesting the court to state the reasons why certiorari was denied, which is presented with

this petition for rehearing, the petitioners do not know why their petition was denied. Consequently until they are informed, they must proceed in the best way they can under the existing circumstances.

The legislative branch of the United States government has done its part under its constitutional power to legislate on the subject of bankruptcies by enacting Chapters 8, 9, 10, 11, 12, 13, 14 and 15 of the Bankruptcy Act as codified at 11 U. S. C. The provisions of these chapters are permanent except those for municipalities and for farmer debtors which have been extended to 1946. The last two times that Section 75 was extended it was done for the purpose of giving time for a thorough revision of it. There is no doubt that it will be made permanent.

This legislation for the relief of individual, farmer, railroad, municipal, corporate, realty owner, wage earner and ship owner debtors greatly enlarged the exercise of the bankruptcy power delegated to the Congress in the Constitution.. The Act of March 3, 1933, being Chapter 8 of the Bankruptcy Act, which initiated the extension of the exercise of the granted power, was enacted upon the recommendations of the President, of the Chief Justice, and of the Department of Justice. Those eight chapters now provide adequate legal machinery for the relief of debtors without the surrender of their property to creditors. This is accomplished by transferring the lien and claims of creditors to the value of the debtor's property in place of permitting the property itself to be transferred to creditors. It is indeed a great progress from the original Roman bankruptcy law which permitted the creditors to dismember the body of their unfortunate debtor.

The age-old procedure of making secured loans to the

owners of property and taking the property from them when values are low has thus been legislatively extinguished. It was the legislative purpose, which is inviolable under the constitutional power exercised by the Congress, to forestall what exists in China today. That nation of vast potential aggregate wealth and resources lies relatively impotent and divided against itself because its small farmers have been dispossessed of their lands by grasping absentee money lenders who have seized mortgaged farm lands.

Had it not been for the enactment of these eight new chapters the producing property of our people would by this time have been in the hands of new, and mostly absentee, owners and the United States of America would be on the Chinese Road. It is only at the beginning of the turning that such a social and political calamity can be averted.

But our tripartite government of checked and balanced legislative, executive and judicial powers does not execute its will by the mere legislation of a national policy. It remains partly or wholly impotent without the cooperation and support of the judiciary. Against the first attacks, by those who never learn and never forget, upon the new debtor policy promulgated by the legislative branch of the government, it was wholly sustained fundamentally by this court and accepted in practice by creditors as to every class of debtors except alone farmer debtors.

The farmer debtor law as it was first enacted, as Section 75 (a) to (r), was an innocuous bit of legislation which by itself accomplished nothing but a slowing down of the inevitable foreclosure and seizure of the farmer debtor's farm. During the slow-down all the farmer debtor could do was to make a proposal to his creditors which they could accept or reject. It was only when the farmers insisted

that there should be no further debtor legislation for railroads and other corporate debtors until some teeth were put into the farmer debtor law, similar to those already in the corporate debtor laws, that the first Section 75 (s) was enacted.

From that time, that is from the passage of the first Section 75 (s), to the present moment the mortgage holders, and their sympathizers, have unceasingly contested the farmer debtor law. The federal land banks which were established to "solve the farm debt problem" and which have constantly been supported by the government, have been the leaders and encouragers of all farm mortgage holders who resist the constitutional legislative power of the nation. With their large, permanently retained legal staffs they have lead the attacks for all farm creditors.

Nothwithstanding the essential similarity in effect of the original Section 75 (s) to the corporate and railroad debtor laws, it was thrown out in *Louisville* v. *Radford*, 1935, 295 U. S. 555, chiefly because it deprived the mortgage holder of its "right to have a public sale at which it could bid." The attack against that enactment was secretly financed by the Association of Life Insurance Presidents none of whose members or their insurance companies, was party to the suit directly or indirectly. It was disclosed several years later that they spent in that battle to defeat the farmer debtor law the sum of $63,790.63, which was about fourteen times what the farm in that case was worth. Investigation of Concentration of Economic Power, Temporary National Economic Committee, 1939, 76th Congress, First Session, pages 4345 to 4555 and Exhibit No. 963 at page 4750.

After the Congress enacted the present Section 75 (s) to succeed the first, and put in it at Section 75 (s) (3) the provision that a farmer debtor might redeem his farm at its appraised value provided that the court must order a public sale if any secured creditor in writing requested it, this court in *Wright* v. *Union Central*, 1940, 311 U. S. 273 held that no such sale could be held until the farmer debtor first had an opportunity to redeem his farm at its value. That decision thus overruled the holding in *Louisville* v. *Radford*, 295 U. S. 555, that a public sale at which it could bid was one of the "rights" of a mortgage holder of which he could not constitutionally be deprived.

When the present Section 75 (s) came before this court on the question of its constitutionality, it was sustained in *Wright* v. *Vinton*, 1937, 300 U. S. 440, with, however, a suggestion in the text and in Note 6 at page 462 of the opinion that for lack of "a reasonable hope" or for lack of "good faith" a farmer debtor proceeding might lawfully be dismissed. That construction was reversed and disapproved in *John Hancock* v. *Bartels*, 1939, 308 U. S. 180, by the whole tenor of the opinion and expressly in Note 3. Also see *Wright* v. *Logan*, 1942, 315 U. S. 139.

These fundamental judicial determinations have not deterred the mortgage holders from continuing their unremitting attempts to break down the purpose of the law in its operation. In *Union Joint Stock Land Bank* v. *Byerly*, 1940, 310 U. S. 1, against the vigorous dissent of three Justices who held that the decision defeated the purposes of the law and provided a ready means of circumventing it, it was held that though a bankruptcy court, without any notice or hearing unlawfully purported to authorize a state court to proceed in foreclosure, the act of the state court

became valid, even though the farmer debtor knew nothing of the act of the bankruptcy court or of the act of the state court.

In *Pfister* v. *Northern Illinois,* 1942, 317 U. S. 144, the decision of the lower courts that a district judge has no jurisdiction to consider a petition for review after the lapse of the ten days named in Section 39(c) of the Bankruptcy Act was reversed. Farmer debtors think it significant that the same district court, by the same judge, had previously held that it had such jurisdiction. Although the lower courts were so reversed on the main legal issue, a century old precedent, repeatedly and uniformly observed by federal courts and approved by this court, was changed so that whether a court "entertains" a petition for rehearing and consequently "whether time for appeal would be enlarged or not would depend upon what the order showed the court did." Quoted from the opinion at page 151. That is, an application for rehearing of an order is filed at the price of learning whether time for appeal has expired or been extended, only by the content and wording of the subsequent order denying it. For in nearly every instance the thirty days for appeal will have expired before the conciliation commissioner has acted upon the application for rehearing. In other words it is the ultimate form in which the conciliation commissioner puts his denial of an application for rehearing which discloses whether he has "entertained" it and this is true even though, as in that case, he state in his finding that he had fully considered the whole proceeding.

The practical result of this decision was to permit a conciliation commissioner to violate Section 75 (s) (2) by charging $6375.00 rent for 2 years, 8 months, 13 days of

possession of an 80 acre, 20 cow, dairy farm; then order an additional $6375 to be paid within the same time, a total of $12,750; and then order the cows, feed and farm implements to be sold.

Again in *Harris* v. *Zion,* 1943, 317 U. S. 447, over the vigorous dissent of three Justices, it was held that the provision of Section 75 (r) that a personal representative of a deceased farmer is a farmer is dependent upon the law of the state despite the fact that while Section 74 was amended to require state authorization, yet Section 75 (r) was twice thereafter amended without requiring such authorization.

Again in *Carter* v. *Kubler,* 1943, 320 U. S. 243, where it was held that the district court disregarded a vital part of the valuation evidence by throwing out of consideration a $5800 previous valuation by the same court on the ground that it related only to "taxation purposes", yet it was held that the value set without such evidence was binding.

Counsel for the petitioners most respectfully present these facts, though none the less earnestly, because they illustrate the statement that while the other debtor laws embodied in the eight chapters of the Bankruptcy Act are accepted fully in practice, as well as in principle, we still have the unremitting and relentless opposition of the holders of mortgages on farm lands to the practical operation of Section 75. Unless the results of the legislation which created Section 75 are forthcoming in the actual adminis-

tration of farmer debtor cases there is no effective farmer debtor law.

What is involved is apparent when it is considered that in five years 453,000 farmers lost their farms through foreclosure, that is, one in twelve. And within a single year one in every nineteen was completely so wiped out. Address of the Administrator of the Office of Price Administration, February 8, 1944.

A statement made to a Congressional Committee which was printed and later published in the press, that a single corporate mortgage holder had accumulated several millions of dollars from resale of seized mortgaged farms has not been publically denied. Hearings, Special Subcommittee on Bankruptcy of the Committee on the Judiciary, 75th Congress, 2nd and 3rd Sessions, December 18, 1937, page 56.

What is not equally apparent is disclosed only by actual contact with farm realties. The ownership by farmers of the lands they own is the absolute necessity of a strong, virile nation. The number of court foreclosures does not adequately measure the drift to farm tenancy. For every single foreclosure in court there are scores of indebted farmers who are forced to surrender their titles through the intimidation of cunning and relentless mortgage holders. "Sign this deed and we will hold it for you and give you the time you ask; otherwise we will foreclose and put you off" are familiar words.

The history of the unceasing attempts to defeat the purpose of Section 75 by farm mortgage holders is an instance of the "trickle down" economic theory in reverse. Utterly defeated in their attempts to wipe the law off of the stat-

ute books, they have concentrated on preventing the farmer debtors from achieving the fruits of the law. Whenever a farmer debtor succeeds in maintaining his case through the three year stay he faces a strenuous contest for his right to redeem his farm at its value. If the mortgage holder can force the farm to a sale, then the law is utterly emasculated. The mortgage holder has won the battle. He may bid the full amount of his claim without paying down a cent of money and thus force an inflated fictitous value for redemption at a price much greater than if the farmer debtor had capitulated before he ever invoked the farmer debtor law. Thus farmers are "taught a lesson"—not to expect that Section 75 will aid them. New devices are constantly being employed to defeat the law.

What Has Happened in This Garlington Case.

1. The record is clear and the appellate court so found, that the farmer debtors filed their farmer debtor amended petition pursuant to Section 75 (s) in full compliance with the order of the bankruptcy court. R. 21 to 39. The clerk's filing date is found at R. 39. R. 90 to 93, the paragraph beginning at the bottom of R. 91 and ending at the middle of R. 92.

2. The bankruptcy court took no steps to administer the case under that amended petition but on the contrary entered an order that none had been filed. R. 75 and 76.

3. The farmer debtors in full compliance with the order of the court filed a second amended petition under Section 75 (s) without withdrawing their original amended petition. R. 47 to 49.

4. Having filed two amended petitions in complete compliance with the courts orders, they were ex post facto denied that right in the order appealed from. R. 49 to 50.

In *Wright* v. *Logan*, 1942, 315 U. S. 139, where lack of diligence had been imputed to the farmer debtors and made the basis of denying to them the right to proceed under their amended petition pursuant to Section 75 (s) this court said:

> "Section 75 (s) does not by its language condition a farmer's right to adjudication upon the diligence with which he has sought to obtain composition or extension under subsections (a) to (r). It 'applies explicitly to a case of a farmer who has failed to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a proposal for a composition or an extension of time to pay his debts.' *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180, 184. That was the situation of the farmers here. And 'the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress . . . lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.' *Wright* v. *Union Central Ins. Co.*, 311 U. S. 273, 279. Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes. Cf. *Borchard* v. *California Bank*, 310 U. S. 311. We think the *Bartels*, [308 U. S. 180], *Wright* [311 U. S. 273] and *Borchard* [310 U. S. 311] cases control our conclusion here, and that the court below was in error in dismissing the applications for adjudication under 75 (s)."

In the Garlingtons there was no lack of diligence. The inaction and delay was that of the court. Shall lack of diligence in the court to administer the case deprive a farmer debtor of the right to the benefits of Section 75?

Is a bankruptcy court to be permitted to compel a farmer debtor to abandon his properly filed amended petition under Section 75 (s) and to file another at a later time so as

to cause him to rest his property rights on conditions as they exist at the later date?

Is the farmer debtor to lose the rights in his property as they existed when his first amended petition was filed?

Is an appellate Court to be permitted to go outside of the record and surmise that it makes no difference anyway whether the first or the second amended petition is to be operative?

These are some of the questions which the petitioners for certiorari would have this court to hear.

If it should seem that there is undue insistence on this subject we repeat that there is intended no disrespect for the court but we would not minimize the earnestness with which it is presented. The amount, either of land, or of money immediately involved, is no indication of the hundreds of thousands of farmers and of the hundreds of millions of dollars that are involved in every farmer debtor case presented to this court.

The petitioners therefore pray that the denial of their petition for certiorari be reconsidered and that the petition be granted.

Respectfully submitted,

Elmer McClain,
Lima, Ohio
Counsel for the Petitioners.

D. M. Oldham,
Abilene, Texas

Thomas E. Hayden,
Abilene, Texas
Of Counsel.

Lima, Ohio
May 16, 1944.

Certificate of Counsel.

I certify that the foregoing petition for rehearing is presented in good faith and not for delay.

ELMER MCCLAIN.